



David B. Cohen  
Mayor

CITY OF NEWTON, MASSACHUSETTS  
Department of Planning and Development  
Michael J. Kruse, Director

Telephone  
(617)-796-1120  
Telefax  
(617) 796-1142  
E-mail  
mkruse@ci.newton.ma.us

Public Hearing Date:	July 12, 2005
Land Use Action Date:	<i>To Be Determined</i>
Board of Aldermen Action Date:	September 19, 2005
90-Day Expiration Date:	October 10, 2005

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development  
Nancy Radzevich, Chief Planner  
Robert Merryman, Senior Planner

DATE: July 8, 2005

SUBJECT: Petition #221-05 of ROSEMONT TRUST, LLC/C/S KESSELER, LLC for SPECIAL PERMIT/SITE PLAN APPROVAL for a change of grade in excess of 3 ft. in order to construct a single-family dwelling at 7 KESSELER WAY, OAK HILL, Ward 8, on land known as Section 82, Block 37, Lot 89 containing approximately 17,439 square feet of land in a district zoned SINGLE RESIDENCE 3.

Petition #222-05 of ROSEMONT TRUST, LLC/C/S KESSELER, LLC for SPECIAL PERMIT/SITE PLAN APPROVAL for a change of grade in excess of 3 ft. in order to construct a single-family dwelling at 12 KESSELER WAY, OAK HILL, Ward 8, on land known as Section 82, Block 37, Lot 85 containing approximately 19,047 square feet of land in a district zoned SINGLE RESIDENCE 3.

Petition #223-05 of ROSEMONT TRUST, LLC/C/S KESSELER, LLC for SPECIAL PERMIT/SITE PLAN APPROVAL for a change of grade in excess of 3 ft. in order to construct a single-family dwelling at 17 KESSELER WAY, OAK HILL, Ward 8, on land known as Section 82, Block 37, Lot 90 containing approximately 17,845 square feet of land in a district zoned SINGLE RESIDENCE 3.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

---

## **EXECUTIVE SUMMARY**

**The petitioner is seeking a special permit for a greater than 3 foot change in grade for each of the three lots in this new subdivision (on a portion of the Kessler Woods site). Each lot will be improved with a new 2½ story single family dwelling with 3-car attached garage. The lots are currently undeveloped with many trees and much underbrush; only the new subdivision roadway and infrastructure improvements are currently under construction.**

---

### **I. BACKGROUND**

The new subdivision known as “Kessler Woods” was approved by the Planning Board, Acting as the Board of Survey on August 11, 2004. The approved subdivision contains seven lots (Lot 1-7) with access on the new subdivision roadway known as “Kessler Way,” and two lots (Lots 8 & 9) with access off of Harwich Road.

In addition, a total of four “Form A” lots were created on this previously vacant parcel. Two (2) of these “Form A” lots (Lots J-3A and J-4A) have frontage on both Brookline Street and the new Kessler Way subdivision road. The other two “Form A” lots (Lots J-1 and J-2), located west of the subdivision, only have frontage along Brookline Street.

### **II. ELEMENTS OF THE PETITION**

The subject properties are located at 7, 12 and 17 Kessler Way, Oak Hill. The petitioner’s lots are the first two lots on the east side of Kessler Way, and the second lot on the west side of Kessler Way. The petitioner is requesting a Special Permit for a greater than 3 foot grade changes for each lot. No other relief is being sought.

### **III. ZONING RELIEF BEING SOUGHT**

*Based on the Chief Zoning Code Official’s Zoning Determinations (SEE ATTACHMENTS “A,” “B” AND “C”), the petitioner is seeking approval through Section 30-5(b)(4) of the City’s Zoning Ordinance to allow for a greater than 3 foot change in grade for all three lots.*

### **IV. SIGNIFICANT ISSUES FOR CONSIDERATION**

*In reviewing this petition, the Board should consider the following:*

- *Whether the greater than 3-foot changes in grade would have any adverse affects on the abutters and/or the character of the surrounding neighborhood.*

### **V. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD**

#### **A. Site**

The subject properties are located at 7 Kessler Way (Lot 89, a/k/a Lot J-4A, containing approx. 17,439 sq. ft. of land), 12 Kessler Way (Lot 90, containing approx. 17,910 sq. ft. of land) and 17 Kessler Way (Lot 85, containing approx. 19,047 sq. ft. of land) in Oak Hill. The new lots are presently part of a vacant wooded site with the exception of the new roadway and subdivision infrastructure, currently under construction. The petitioner intends to construct a 2½ story single family dwelling with a 3 car attached garage on each lot. Each residence is proposed to have a 16 ft. wide driveway, with access off of Kessler Way.

B. Neighborhood

The subject property is located near the Brookline/Newton border, in Oak Hill, within a large Single Residence 3 District. The surrounding neighborhood is comprised of single-family residences, most of which were constructed in the 1950s. The neighboring parcels range in size from 7,000 sq. ft. to 14,000 sq. ft. in lot area, averaging slightly larger than 10,000 sq. ft.

VI. ANALYSIS

A. Technical Considerations – Section 30-15, Dimensional Controls

The following table compares the proposed single-family residences to the technical requirements in a Single Residence 3 District:

<b>Single Residence 3</b>	<b>Required</b>	<b>Lot 89</b>	<b>Lot 85</b>	<b>Lot 90</b>
Minimum lot size	10,000 sq. ft.	17,439 sq. ft.	19,047 sq. ft.	17,845 sq. ft.
Frontage	80 ft.	287 ft.	97.61 ft.	97.92 ft.
Setbacks				
Front	30 ft.	30.6 ft.	30.5 ft.	34.4 ft.
Side	10 ft.	10.5 ft.	12.7 ft.	11.8 ft.
Rear	15 ft.	64.6 ft.	70.9 ft.	88 ft.
Building height	30 ft.	28 ft.	29.53 ft.	27.3 ft.
Max. # of stories	2½ stories	2 ½ stories	2 ½ stories	2 ½ stories
Floor Area Ratio	0.35	0.296	0.287	0.30
Lot Coverage	30%	17.8 %	15.5 %	15.9 %
Open Space	50%	73.8 %	79.6 %	76.8 %

As shown in the table above the proposed single family dwellings will conform to all dimensional requirements within Section 30-15 Table I.

B. Technical Considerations – Section 30-19, Parking Requirements

The following table compares the proposed parking for the single-family residences to the parking requirements:

<b>Parking Ordinance</b>	<b>Required</b>	<b>Lot 89</b>	<b>Lot 85</b>	<b>Lot 90</b>
Number of stalls	2 stalls	3 garage stalls	3 garage stalls	3 garage stalls
Setbacks				
Front	30 ft.	30.9 ft.	30.5 ft.	44 ft.
Side	10 ft.	70 ft.	12.7 ft.	11.8 ft.
Rear	15 ft.	100 ft.	75 ft.	91 ft.
Min. Stall width	9 ft.	9 ft.	9 ft.	9 ft.
Min. stall length	19 ft.	21 ft.	21 ft.	21 ft.
Driveway width	12 ft. –20 ft.	16 ft.	16 ft.	16 ft.

As shown in the table above the proposed parking areas for the single-family dwellings will conform to requirements of the parking ordinance Section 30-19.

C. Building Design

The three proposed single-family dwellings, all of which are 5,000+ sq. ft., have similar designs that imitate the shingle style “Queen Anne” with a gable roof, clapboard siding and a fieldstone veneer accent on the front of the first floor. The proposed homes all have five bedrooms, 5½ bathrooms, and each has an elevator.

Although not related to this special permit, it is worth noting that the approved subdivision includes a self-imposed protective covenant that requires approval of the building design and site improvements on each lot by a Design Review Committee. (*SEE ATTACHMENT “D”*). The petitioner has submitted this design review approval, which requires an affirmative vote of two of three Committee members. Although the house plans have been approved by the Design Review Committee (*SEE ATTACHMENTS “E,” “F,” AND “G”*), the Planning Department believes that the subdivision as a whole would benefit from greater diversity in the design of the homes.

D. Site Design

1. 7 Kessler Way (Lot 89, a/k/a Lot J-4A)

The petitioner is proposing to regrade the front yard by filling in the 6-foot depression between the new roadway and the foundation of the new house proposed for 7 Kessler Way. The proposed fill area, which would have a grade change (depth) of greater than 3 feet, in an area of approximately 5,400 sq. ft. of the 17,439 sq. ft. lot. The Board should be aware that the total area being filled and thus disturbed is greater than depicted by the gray hatching on the topographic plans, which only defines the areas where the grade changes exceed 3 ft.

***The submitted plans appear to depict proposed site grading changes in excess of 90% of this lot, which is one of the most visible lots in the subdivision. Such a plan raises concerns about retention of the sites natural topography or any existing landscaping.***

2. 12 Kessler Way (Lot 85)

The proposed fill area that would have a grade change (depth) of greater than 3 feet would be approximately 5,403 sq. ft. of the lot. Similar to Lot 89, the plans show a substantial amount of the site will be filled and thus the disturbed area is greater than the area depicted by the gray hatching on the topographic plans, which only defines 3 foot grade changes as proposed.

***The submitted plans appear to depict proposed site grading changes in excess of 60% of the lot area. The submitted plans for 12 Kessler Way also show a retaining wall that appears to be 9 feet high without providing specific engineered plans or details.***

3. 17 Kessler Way (Lot 90)

The proposed area that would have a grade change (depth) of greater than 3 feet would be 3,655 sq. ft. in front yard and 815 sq. ft. at the rear of the proposed house at 17

Kessler Way. This lot is different than the other two lots in that the submitted plans appear to depict leveling a small 7-foot high mound in the front of 17 Kessler Way and also leveling the small 3-foot high mound in the rear yard.

***The submitted plans appear to depict proposed site grading changes in excess of 75% of the lot area.***

At the Development Review Team meeting with the petitioner, City staff was left with the impression that the area where the grade would be altered by more than three feet was less than what is shown on the final plans. At that time it was believed that the need for regrading was due to the need to access the site, given the change in topography resulting from construction of the new subdivision roadway. After receiving the final plans for review (prior to filing), the Planning Department staff advised the petitioner's attorney of our concern with the amount of regrading shown, and suggested that they look at redesigning the home to better fit with the existing topography. The petitioner has decided to proceed with their original proposed plans.

E. Commission Reviews

The Conservation Commission issued an Order of Conditions for the subdivision in August of 2004, which included each of the three lots, houses, driveway/patios, drainage and landscaping. On April 28, 2005 the Commission approved the minor changes to the lots at both 12 and 17 Kessler Way. (*SEE ATTACHMENT "H"*).

F. Landscaping

The petitioner submitted a landscape plan for each lot including new trees, shrubs, and groundcover. Although compliance with the Tree Preservation Ordinance is not specifically tied to the special permit process, the Planning Department staff had suggested that the petitioners develop a plan that complies with the Tree Preservation Ordinance, so that the final planting plans would be consistent with the Landscape Plans that would be referenced in the Board Order, should the Board approve these petitions.

A significant number of trees will be removed on each of the three lots. It was reported that Lot 89 will have 136 caliper inches of protected trees removed and replaced with approximately 65 caliper inches of smaller trees. Lot 85 will have 135 caliper inches of protected trees removed and replaced with approximately 25 caliper inches of smaller trees. Lot 90 will have 126 caliper inches of protected trees removed and replaced with approximately 32 caliper inches of smaller trees.

*Prior to the public hearing, the City's Tree Warden is expected to review these plans for compliance with the Tree Preservation Ordinance. Additionally, since a significant number of protected trees (diameter of 8" DBH or greater) are being removed, and given the substantial amount of fill on each of these lots, it is important to get the Tree Warden's opinion as to whether or not even more trees will need to be removed from the lots than shown on the submitted plans.*

In addition to compliance with Tree Preservation Ordinance, the Conservation Commission also approved a Landscape Plan as part of their review of the overall subdivision and regrading plans. The City's Senior Environmental Planner found that the landscaping on Lot

7 is missing one (1) shade tree and several evergreen and deciduous shrubs. The design is somewhat different from the approved plan, and types, numbers and locations of shrubs may be similar, but clarification is needed. ***The Planning Department recommends that this request for special permit not be scheduled for a Working Session until the petitioner has developed a plan that complies with the Tree Preservation Ordinance and is consistent with the plan approved by the Conservation Commission.***

G. Relevant Site Plan Approval Criteria

1. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements, including regulation of the number, design and location of access driveways and the location and design of handicapped parking.

The petitioner is proposing to access each site with a 16 ft. wide driveway that will also have a 27 ft. wide apron in front of the 3 bay garage, allowing drivers to exit the lot in a forward direction. The construction of the 3 driveways and three-car garages proposed by the petitioner should have no impacts on vehicular or pedestrian safety on-site or in relation to the adjacent streets. Although the driveway width is not necessary tied to the special permit request, the Planning Department recommends that the petitioner consider reducing the driveway width to maximum of 12 ft., to be more consistent with single-family residences in other parts of the City.

Access to single-family residences are not typically reviewed by the Fire Department, unless the site includes a detached accessory apartment, which are not proposed in these petitions. As such, there is no review memo from the Fire Department.

2. Adequacy of the methods for disposal of sewage, refuse and other wastes and of the methods of regulating surface water drainage

Prior to filing, the Planning Department advised the petitioners that they would need to submit drainage calculations. Although the Planning Department had understood that the petitioner filed these documents with the Engineering Division of Public Works, the Associate City Engineer has requested a drainage analysis be provided for each of these three lots “to verify that there is no net increase of impervious areas of [these] plans as compared to the subdivision plan that was approved by the Planning Board, Acting as the Board of Survey....” The Associate City Engineer has also asked for some additional changes to the plans, and has requested that the 20’ Buffer Zone be identified. (*SEE ATTACHMENTS “I,” “J,” AND “K”*)

4. Screening of parking areas and structure(s) on the site from adjoining premises or from the street by walls, fences, plantings or other means.

The submitted landscape plans appear to be minimal compared to the amount of vegetation that is being removed. Screening of parking areas is nonexistent in all 3 plans and minimal landscaping is proposed in the large areas with proposed grade changes, which are also the front-yards of the new homes. Prior to filing, the petitioner was advised to submit a landscape plan to screen all the areas associated with the 3 ft. grade change, which includes the driveway/parking area. ***In addition to complying with the Tree Preservation Ordinance and the Conservation Commission’s approved***

***Landscape Plan, the Planning Department recommends that the landscape plans be revised to include screening of all areas related to the > 3 ft. change in grade, including the driveway/parking areas.***

5. Avoidance of major topographical changes; tree and soil removal shall be minimized and any topographic changes shall be in keeping with the appearance of neighboring developed areas

The petitioner is proposing major topographical changes and substantial tree removal to all three lots. Although the topographic changes and tree removal appear to be necessitated by the elevation of the approved roadway and the size and location of the proposed homes, the Planning Department believes that less grading work could occur which could help preserve some of the existing topography and mature trees.

See additional detailed comments in Sections V. D. and V.F., above.

6. Consideration of site design, including the location and configuration of structures and the relationship of the site's structures to nearby structures in terms of major design elements including scale, materials, color, roof and cornice lines

As previously noted, the proposed single-family dwellings have similar designs that imitate the shingle style "Queen Anne" with a gable roof, clapboard siding and a fieldstone veneer accent on the front of the first floor. Although the homes are large, the lots have been planned to be larger than the average existing neighborhood lots. Although the residences appear to be consistent with major design elements of nearby structures, the Planning Department recommends that owners/developers be encouraged to provide more variation in the house designs within this subdivision.

#### H. Relevant Special Permit Criteria

1. The specific site is an appropriate location for such use, structure

Although the homes are large, the single-family residences are appropriate for this location and are consistent with the uses in the surrounding neighborhood. The Planning Department notes that the structures would be more appropriate if they had been designed to fit in with the existing topography of the site.

2. The use as developed and operated will not adversely affect the neighborhood

As long as drainage is controlled on site, the construction of the proposed single-family dwellings and changes in the topography should not adversely affect the neighborhood.

### VII. SUMMARY

The petitioner intends to construct a 2 ½ story Queen Anne style single family dwelling with 3 car attached garage on each of the three lots. The proposed driveways are all 16 feet wide with curb cuts on Kessler Way.

The subject properties are located at 7 Kessler Way (Lot 89) containing approximately 17,439 sq. ft., 12 Kessler Way (Lot 90) containing approximately 17,910 sq. ft. and 17 Kessler Way (Lot 85) containing approximately 19,047 sq. ft. of land in Oak Hill within a Single Residence 3

District. The lots are presently vacant wooded parcels; only the new roadway and subdivision infrastructure are under construction.

The petitioner is proposing to grade each of the lots beyond what appears to be necessary to provide access from the roadway and to construct the homes. In so doing the petitioner will be removing more protected trees and other natural features than may be necessary. The proposed landscape plans appear to be inadequate when considering the excessive grading and the amount of vegetation being removed from the site.

***Prior to the Working Session:***

- 1. The petitioner should submit a revised landscape plan that will comply with both the Tree Preservation Ordinance and the Conservation Commission approved landscape plans. The revised plan should include screening for all areas of the site impacted by the > 3 ft. changes in grade, including the parking areas and foundation plantings, for review by the City's Tree Warden and Planning Department.***
- 2. The petitioner should substantially reduce the areas to be graded and increase the use of (fieldstone) retaining walls in order to further reduce the amount of filling on all three sites and allow for the retention of more existing trees.***
- 3. The petitioner should submit details of all proposed retaining wall(s) to the City Engineer for review and approval.***